IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.956 OF 2005

Sameer Kedia ... Applicant

V/s

Seven Hills Securities Ltd. &

Anr. ... Respondents

Shri Milind S. Gyani for applicant

Mr. K.P. Shreejith i/b Sreeje& Lal for respondent No.1

Shri A.S. Shitole, APP for the State.

Coram : V.M.Kanade, J.

Dated : 12/04/2005.

P.C. :-

1 I have heard the learned counsels for the applicant, respondent No.1 and APP for the State.

2 The applicant is challenging the order of issuance of process passed by the Metropolitan Magistrate on the complaint filed under section 138 of Negotiable Instruments Act.

3 It is submitted by the learned counsel for the applicant that there was no existing liability and debt payable to the complainant and, therefore, no offence is

made out against the applicant under section 138 of the said Act.

4 In the complaint, there are several averments indicating how and under what circumstance the accused was liabile to pay an amount of Rs.45 lakhs.The complainant has made several averments in paragraphs-3 to 10 of the complant which indicate the nature of entire transaction. In paragraph-4 it is stated that the accused had issued cheque for Rs. 45 lakhs drawn on United Bank of India. When it was deposited with the banker, the same was dishonoured. Therefore, it is not possible to accept the submission made by the learned counsel for the applicant. This issue can only be decided by the trial court after the evidence is led by both the parties. The presumption which is raised under section 139 is a rebuttable presumption. The applicant can lead evidence and to establish that there was no existing debt or liability. The trial court is directed to decide the issue raised in this application after both the parties is lead evidence on merits and in accordance with law. Accordingly, criminal application is dismissed.

6 The trial court is directed to decide the case as expeditiously as possible, in any case within a period of 6 months.

(V.M. Kanade, J.)